



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

**MAY 07 2014**

CERTIFIED MAIL NO. 7008 2810 0002 3066 4915  
RETURN RECEIPT REQUESTED

Mr. W. Gregory Lehmkuhl  
President  
Con-way Freight Inc.  
2211 Old Earhart Road Suite 100  
Ann Arbor, MI 48105-2751

Dear Mr. Lehmkuhl:

Region IX of the U.S. Environmental Protection Agency (the "EPA") is issuing this letter to determine the Clean Air Act, 42 U.S.C. §§ 7401-7671q (the "Act"), compliance status of Con-way Freight Inc. ("Con-way Freight") with respect to Section 2025 of the California Code of Regulations, Title 13, Article 4.5, Chapter 1, which is the California Air Resources Board's ("CARB's") "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles" (the "Truck and Bus Regulation").<sup>1</sup> The Truck and Bus Regulation is included in the federally-approved and federally-enforceable State Implementation Plan for the State of California.

Pursuant to Section 114 of the Act, 42 U.S.C. § 7414, Con-way Freight is hereby required to provide the following information requested in this letter within forty-five (45) calendar days after receipt of this letter. In responding to this request, Con-way Freight shall use the instructions provided in Enclosure 1.<sup>2</sup>

- 1) For each diesel-fueled vehicle in Con-way Freight's fleet<sup>3</sup> driven in California at any time from January 1, 2012 to the date of this letter with a Gross Vehicle Weight Rating

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<sup>1</sup> The full text of the Truck and Bus Regulation is available on the CARB website at <http://www.arb.ca.gov/msprog/onrdiesel/documents/TBFinalReg.pdf>.

<sup>2</sup> Enclosure 1, Instruction 5, identifies which responses to this request should be entered into the provided workbook called TRUCKINFO.xlsx.

<sup>3</sup> As defined in Section 2025(d)(28) of the Truck and Bus Regulation.

("GVWR")<sup>4</sup> greater than 26,000 pounds and an engine model year prior to 2007, provide the following:

- a) state of vehicle registration;
  - b) license plate number;
  - c) vehicle identification number ("VIN");
  - d) engine model year;
  - e) engine family; and
  - f) assigned vehicle terminal, if applicable.
- 2) For each vehicle identified in response to request 1, is the vehicle equipped with a diesel particulate filter ("DPF")<sup>5</sup>? If the answer to this request is "no", skip requests 3, 4, 5 and 6 below.
- 3) For each vehicle for which the response to request 2 is "yes", provide the following information about the DPF on the vehicle:
  - a) DPF manufacturer;
  - b) DPF family name;
  - c) DPF serial number;
  - d) date of purchase; and
  - e) date of installation.
- 4) For each vehicle for which the response to request 2 is "yes", produce a copy of the installation and purchase order documents for each DPF installed.
- 5) State whether each vehicle for which the response to request 2 is "yes" has operated continuously with a DPF as it was designed since installation.
- 6) For each vehicle for which the response to request 5 is "no", describe the reason(s) it did not operate continuously with a DPF as it was designed since installation and produce a copy any records supporting the reason(s).
- 7) For each diesel-fueled vehicle in Con-way Freight's fleet<sup>6</sup> driven in California at any time from January 1, 2012 to the date of this letter, that is not equipped with PM BACT;<sup>7</sup> has a

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<sup>4</sup> As defined in Section 2025(d)(33) of the Truck and Bus Regulation.

<sup>5</sup> As defined in Section 2025(d)(17) of the Truck and Bus Regulation.

<sup>6</sup> As defined in Section 2025(d)(28) of the Truck and Bus Regulation.

<sup>7</sup> As defined in Section 2025(d)(48) of the Truck and Bus Regulation.

GVWR greater than 26,000 pounds; and has an engine model year of 2007, 2008, or 2009, provide the following:

- a) state of vehicle registration;
  - b) license plate number;
  - c) VIN;
  - d) engine model year;
  - e) engine family; and
  - f) assigned vehicle terminal, if applicable.
- 8) For each vehicle identified in response to request 1 or 7, specify the total miles traveled in California for:
- a) calendar year ("CY") 2012;
  - b) CY 2013; and
  - c) CY 2014 to the date of this information request.
- 9) For each vehicle identified in response to request 1 or 7, specify whether the vehicle is a drayage truck<sup>8</sup>.
- 10) For each vehicle identified in response to request 1 or 7, provide a copy of fleet mileage summary documents submitted to the International Registration Plan ("IRP")<sup>9</sup> from January 1, 2012 to the date of this letter. These fleet summary documents could include monthly, quarterly, or annual mileage for each vehicle driven in California and other states.
- 11) Provide the terminal name, address, telephone number, and contact person for each terminal identified in response to requests 1(f) and 7(f), if any.
- 12) For each diesel-fueled vehicle hired or dispatched<sup>10</sup> by Con-way Freight, at any time from January 1, 2012 to the date of this letter, with a GVWR greater than 26,000 pounds and an engine model year prior to 2007, provide the following:
- a) the name of the company that owned the vehicle which was hired or dispatched;
  - b) the contact person(s) for the company identified in request 12(a) who was responsible for providing the vehicle which was hired or dispatched to Con-way Freight; and

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<sup>8</sup> As defined in Section 2025(d)(19) of the Truck and Bus Regulation.

<sup>9</sup> As defined in Section 2025(d)(38) of the Truck and Bus Regulation.

<sup>10</sup> As referred to in Section 2025(x)(2) of the Truck and Bus Regulation.

- c) the phone number(s) and address(es) for the contact person(s) identified in request 12(b).

13) For each vehicle identified in response to request 12:

- a) Describe in detail how Con-way Freight verified that each vehicle hired or dispatched in California was in compliance with the Truck and Bus Regulation and its recordkeeping requirements, as required by Section 2025(x)(2) of the Truck and Bus Regulation.
- b) Provide copies of documents establishing vehicle compliance such as a Certificate of Reported Compliance<sup>11</sup>, a written statement from a company that verifies that Con-way Freight's fleet is in compliance with the Truck and Bus Regulation, or contracts with the company that verifies compliance with the Truck and Bus Regulation.

14) For each diesel-fueled vehicle leased by Con-way Freight to transport product to, from or within California at any time from January 1, 2012 to the date of this letter, with a GVWR greater than 26,000 pounds and an engine model year prior to 2007, provide the following:

- a) license plate number;
- b) VIN;
- c) vehicle owner name and contact person(s) who was responsible for providing the leased vehicle to Con-way Freight; and
- d) phone numbers(s) and address(es) for the contact person(s) identified in request 14(c).

15) For each vehicle identified in response to request 14:

- a) State whether or not Con-way Freight is the fleet owner<sup>12</sup>;
- b) If Con-way Freight is not the fleet owner, describe the basis for that conclusion; and
- c) If Con-way Freight is not the fleet owner, provide a copy of all rental or lease agreements or other evidence, if applicable, which supports that conclusion.

If Con-way Freight seeks to withhold any document(s) based on a claim of attorney-client communications privilege or the attorney work product doctrine in its response to this information request, Con-way Freight shall provide with its response a privilege log for each document containing the following information: (i) the date, author(s), every individual to whom the document was originally sent, every individual who subsequently acquired the document, the purpose for which the document was sent to or obtained by those individuals,

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<sup>11</sup> As described in Section 2025(y) of the Truck and Bus Regulation.

<sup>12</sup> As defined in Section 2025(d)(29) of the Truck and Bus Regulation.



and the employment titles of the authors and recipients; (ii) the subject matter of the document; (iii) the privilege claimed for the document and all facts supporting the claim of privilege; (iv) the primary purpose(s), including the business purposes, for which the document was made; (v) the question(s) in this information request to which the document is responsive to; and (vi) all facts contained in the document that are responsive to a question in this information request.

The responsive information shall be accompanied by a cover letter sent via certified mail with return receipt requested to the following address:

Ms. Kathleen H. Johnson  
Director, Enforcement Division  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

Attn: Cyntia Steiner (ENF-2-1)

Please be advised that under Section 113(a) of the Act, 42 U.S.C. § 7413(a), failure to provide the information and documents required by this letter may result in an order requiring compliance, an order assessing an administrative penalty, or a civil action for appropriate relief. Section 113(b) of the Act, 42 U.S.C. § 7413(b), provides for the assessment of a civil penalty, which has been adjusted for inflation to \$37,500 per day, for each violation of the Act. See 40 C.F.R. § 19.4 (for penalties effective after January 12, 2009). In addition, Section 113(c) of the Act, 42 U.S.C. § 7413(c), provides criminal penalties for knowingly making any false material statement in, or omitting material information from, any report required under the Act. The information provided by Con-way Freight may be used by the United States in administrative, civil, or criminal proceedings.

You may, if you desire, assert a confidential business information ("CBI") claim on behalf of Con-way Freight covering part or all of the information provided to EPA in response to this letter. Any such CBI claim must conform to the requirements set forth in 40 C.F.R. Part 2, particularly 40 C.F.R. § 2.203, and contain supporting documentary evidence. In addition, any such claim must be substantiated in accordance with 40 C.F.R. § 2.204(e)(4).

Specify by page, paragraph and sentence when identifying information from a document where you make a CBI claim. Where your claim does not include all information on a page, please attach a copy of each such page with brackets around the text you claim to be CBI. If a page, document, or group or class of documents claimed by you to be CBI, contains a significant amount of information which our Regional Counsel determines is not CBI, your CBI claim regarding that page, document, or group or class of documents may be denied.

You are advised that certain information may be made available to the public pursuant to Section 114(c) of the Act, 42 U.S.C. § 7414(c), and 40 C.F.R. § 2.301, notwithstanding a claim that such information is entitled to confidential treatment. Please note that emission data provided pursuant to Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. Emission data is defined at 40 C.F.R. §§ 2.301(a)(2). If no claim of confidentiality is received with your reply, the information may be made available to the public without notice to Con-way Freight.

This information request is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not the "collection of information" within the meaning of 44 U.S.C §§ 3502(3) and 3518(c)(1), since it is being issued during the conduct of an investigation involving the EPA against specific individuals or entities. See also 5 C.F.R. § 1320.4.

We would also like to take this opportunity to advise you that Con-way Freight may qualify as a "small business" under the Small Business Regulatory Enforcement and Fairness Act ("SBREFA"). Please review the enclosed SBREFA Information Sheet, which is designed to provide information on compliance assistance to entities that may qualify as small businesses as well as to inform them of their right to comment to the SBREFA Ombudsman concerning EPA's enforcement activities. Please be aware that SBREFA does not eliminate Con-way Freight's responsibility to respond in a timely fashion to any complaint or information request that EPA may issue or other enforcement action that EPA may take, nor does SBREFA create any new rights or defenses under the law other than the right to comment to the SBREFA Ombudsman.

Con-way Freight shall submit its response to this request postmarked no later than forty-five (45) calendar days after receipt of this letter. All information submitted in response to this request must be certified in a signed, separate statement as true, correct, accurate, and complete, to the best of his/her knowledge, by an individual with sufficient knowledge and authority to make such representations on behalf of Con-way Freight. On the last page of your response to this information request, include the certification contained in Enclosure 2.

If Con-way Freight anticipates that it will not be able to respond fully to this request within the time period specified, Con-way Freight must submit a sworn declaration by a responsible corporate official within ten (10) calendar days after receipt of this letter specifying what information will be provided by the allotted deadline, describing the efforts that have been/are being undertaken to obtain the remaining other responsive information, and providing a detailed schedule of when such other responsive information will be provided. Upon receipt and based upon such declaration, EPA may extend the time in which to respond to this information request. Also, please contact EPA if Con-way Freight determines that a full response to a particular request for information would require the submission of an extremely large number of documents or data files. Based upon such notification, EPA may modify the scope of the documents required to be produced.

If you have any questions regarding this request, please contact Cyntia Steiner of my staff at (415) 947-3112; or your attorney can contact Xiao Zhang, Office of Regional Counsel at (415) 972-3266 on or before May 22, or Daniel Reich, Office of Regional Counsel, at (415) 972-3911 after May 22. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kathleen H. Johnson".

Kathleen H. Johnson  
Director, Enforcement Division

Enclosures

cc: James Ryden, California Air Resources Board

## ENCLOSURE 1: Instructions

- 1) Prepare a cover letter that includes a written response to all requests referencing the request number to which each answer or document pertains. In addition, attach to the cover letter the signed certification by a corporate official with authority to make such representations for Con-way Freight, described in the body of the above information request letter.
- 2) To the extent that Con-way Freight has no responsive information or documents for any particular request, this must be explicitly stated in the response.
- 3) Where documents or information necessary for a response are neither in your possession nor available to you, indicate in your response why such documents or information is not available or in your possession and identify any source that either possesses or is likely to possess such information.
- 4) To the extent that a document is responsive to more than one request, this must be so indicated and only one copy of the document need be provided.
- 5) Please include data in the provided workbook called TRUCKINFO.xlsx in an electronic format. Follow the instruction in TRUCKINFO.xlsx under the "Instructions" tab. The Instructions tab requires, in part, that:
  - a) the responses to requests 1, 2, 3, and 5 shall be entered in the enclosed file TRUCKINFO.xlsx under the "Older Fleet" tab;
  - b) the responses to request 7 shall be entered in the enclosed file TRUCKINFO.xlsx under the "2007-2009 Fleet" tab;
  - c) the responses to requests 8 and 9 shall be entered in the enclosed file TRUCKINFO.xlsx under the "Older Fleet" tab or "2007-2009 Fleet" tab, respectively;
  - d) the responses to request 11 shall be entered in the enclosed file TRUCKINFO.xlsx under the "Terminals" tab; and
  - e) the responses to requests 14(a) through (c) and 15(a) shall be entered in the enclosed file TRUCKINFO.xlsx under the "For Lease" tab.
- 6) All data not submitted in TRUCKINFO.xlsx must be provided in spreadsheet format (e.g., Excel format) rather than as images.
- 7) All responsive documents must be:
  - a) provided as an accurate and legible copy in a searchable PDF file format;
  - b) submitted on a disk (CD or DVD media); and
  - c) number stamped in sequential order (e.g. BATES stamped).

ENCLOSURE 2: Statement of Certification

[This Certification is for signature by the president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or another executive with authority to perform similar policy or decision-making functions of the corporation.]

Con-way Freight Inc. is submitting the enclosed documents in response to the U.S. Environmental Protection Agency's ("EPA") request for information, issued pursuant to Section 114(a) of the Clean Air Act, to determine whether the facility is in compliance with the Clean Air Act, including with the federally-approved California Truck and Bus Regulation.

I certify that I am fully authorized by Con-way Freight Inc. to provide the above information on its behalf to EPA.

I certify under penalty of law that I have personally examined and am familiar with the statements and information submitted in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true, correct, accurate and complete. I am aware that there are significant penalties for submitting false statements and information, or omitting required statements and information, including the possibility of fines and imprisonment for knowing violations.

Date: \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_





## U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources, including workshops, training sessions, hotlines, websites and guides, to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

### EPA's Small Business Websites

Small Business Environmental Homepage - [www.smallbiz-enviroweb.org](http://www.smallbiz-enviroweb.org)

Small Business Gateway - [www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)

EPA's Small Business Ombudsman - [www.epa.gov/sbo](http://www.epa.gov/sbo) or 1-800-368-5888

#### EPA's Compliance Assistance Homepage

[www.epa.gov/compliance/assistance/  
business.html](http://www.epa.gov/compliance/assistance/business.html)

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

#### EPA's Compliance Assistance Centers

[www.assistancecenters.net](http://www.assistancecenters.net)

EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

#### Agriculture

[www.epa.gov/agriculture/](http://www.epa.gov/agriculture/)

#### Automotive Recycling

[www.ecarcenter.org](http://www.ecarcenter.org)

#### Automotive Service and Repair

[www.ccar-greenlink.org](http://www.ccar-greenlink.org) or 1-888-GRN-LINK

#### Chemical Manufacturing

[www.chemalliance.org](http://www.chemalliance.org)

#### Construction

[www.cicacenter.org](http://www.cicacenter.org) or 1-734-995-4911

#### Education

[www.campuserc.org](http://www.campuserc.org)

#### Food Processing

[www.fpeac.org](http://www.fpeac.org)

#### Healthcare

[www.hercenter.org](http://www.hercenter.org)

#### Local Government

[www.lgean.org](http://www.lgean.org)

#### Metal Finishing

[www.nmfrc.org](http://www.nmfrc.org)

#### Paints and Coatings

[www.paintcenter.org](http://www.paintcenter.org)

#### Printed Wiring Board Manufacturing

[www.pwbrc.org](http://www.pwbrc.org)

#### Printing

[www.pneac.org](http://www.pneac.org)

#### Ports

[www.portcompliance.org](http://www.portcompliance.org)

#### U.S. Border Compliance and Import/Export Issues

[www.bordercenter.org](http://www.bordercenter.org)

#### Hotlines, Helplines and Clearinghouses

[www.epa.gov/epahome/hotline.htm](http://www.epa.gov/epahome/hotline.htm)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

#### Antimicrobial Information Hotline

[info-antimicrobial@epa.gov](mailto:info-antimicrobial@epa.gov) or  
1-703-308-6411

#### Clean Air Technology Center (CATC) Info-line

[www.epa.gov/ttn/catc](http://www.epa.gov/ttn/catc) or 1-919-541-0800

#### Emergency Planning and Community Right-To-Know Act

[www.epa.gov/superfund/resources/  
infocenter/epcra.htm](http://www.epa.gov/superfund/resources/infocenter/epcra.htm) or 1-800-424-9346

#### EPA Imported Vehicles and Engines Public Helpline

[www.epa.gov/otaq/imports](http://www.epa.gov/otaq/imports) or  
734-214-4100

#### National Pesticide Information Center

[www.npic.orst.edu/](http://www.npic.orst.edu/) or 1-800-858-7378

#### National Response Center Hotline - to report oil and hazardous substance spills

[www.nrc.uscg.mil](http://www.nrc.uscg.mil) or 1-800-424-8802

#### Pollution Prevention Information Clearinghouse (PPIC)

[www.epa.gov/opptintr/ppic](http://www.epa.gov/opptintr/ppic) or  
1-202-566-0799

#### Safe Drinking Water Hotline

[www.epa.gov/safewater/hotline/index.  
html](http://www.epa.gov/safewater/hotline/index.html) or 1-800-426-4791

#### Stratospheric Ozone Protection Hotline

[www.epa.gov/ozone](http://www.epa.gov/ozone) or 1-800-296-1996

**Toxic Substances Control Act (TSCA) Hotline**  
tsca-hotline@epa.gov or 1-202-554-1404

**Wetlands Information Helpline**  
www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828

### State and Tribal Web-Based Resources

**State Resource Locators**  
www.envcap.org/statetools

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

**State Small Business Environmental Assistance Programs (SBEAPs)**  
www.smallbiz-enviroweb.org

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits. The website is a central point for sharing resources between EPA and states.

**EPA's Tribal Compliance Assistance Center**  
www.epa.gov/tribalcompliance/index.html

The Center provides material to Tribes on environmental stewardship and regulations that might apply to tribal government operations.

**EPA's Tribal Portal**  
www.epa.gov/tribalportal/

The Portal helps users locate tribal-related information within EPA and other federal agencies.

### EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

**EPA's Small Business Compliance Policy**  
www.epa.gov/compliance/incentives/smallbusiness/index.html

This Policy offers small businesses special incentives to come into compliance voluntarily.

**EPA's Audit Policy**  
www.epa.gov/compliance/incentives/auditing/auditpolicy.html

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

### Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247), or go to their website at www.sba.gov/ombudsman.

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

### Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

*EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.*